

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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UNITED STATES )  
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)  
v. )  
)  
MICHAEL PINA )  
)  
\_\_\_\_\_)

Cr. No. 04-10195-PBS

**MOTION IN LIMINE TO EXCLUDE EVIDENCE**

The Defendant, Michael Pina, hereby moves the Court to exclude from admission into evidence an audio tape recording of a telephone call the government will allege is from an informant to Mr. Pina on February 5, 2004. In that tape recording there is a conversation in which the informant asks the person on the other end of the line if he can obtain a firearm for the informant. The person responds with words to the effect that he doesn't use or carry a firearm but he will check with someone else.

Mr. Pina is not charged with a firearm offense, nor are there any allegations that Mr. Pina possessed a firearm at any time. The Court should exclude the evidence as its probative value is significantly outweighed by the potential prejudice, to wit that Mr. Pina was possibly willing to obtain a firearm for the informant, and that therefore he has propensity to commit criminal acts. Testimony concerning unrelated matters constitutes classic prohibited Fed. R. Evid. 404(b) evidence, in other words, evidence introduced to show that he is a bad actor, and that he acted in conformity therewith by committing the

crimes for which he is currently charged. Where the evidence proffered is of such scant (if any) probative value to the issue before the jury, and the potential prejudice to the defendant is so serious, the Court should exercise its discretion and order said evidence excluded. The balancing test required by Fed.R.Evid. 403, militates in favor of its exclusion. Fed.R.Evid. 403 states:

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence”

The prejudice to Mr. Pina said evidence would cause clearly outweighs any probative value it might have, and as such should be excluded.

For the foregoing reasons, the defendant prays the Court allow this motion.

Respectfully Submitted,  
Michael Pina  
By his attorney

/s/ Michael C. Andrews

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